INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statutes and rules involved	2
Statement	2
Argument	7
Conclusion	16
Appendix	17

CITATIONS

Cases:

Ballard v. *United States*, 329 U.S. 187	8
Braverman v. *United States*, 317 U.S. 49	12
Christoffel v. *United States*, 214 F. 2d 265	8
Ekberg v. *United States*, 167 F. 2d 380	10
Gaunt v. *United States*, 184 F. 2d 284, certiorari denied, 340 U.S. 917	10
Guzik v. *United States*, 54 F. 2d 618, certiorari denied, 285 U.S. 545	10
Jin Fuey Moy v. *United States*, 254 U.S. 189	11
Moore v. *Harjo*, 144 F. 2d 318	15
Peters v. *United States*, 307 F. 2d 193	12
Pollard v. *United States*, 352 U.S. 354	13
Reynolds v. *United States*, 225 F. 2d 123, certiorari denied, 350 U.S. 914	10
Rick v. *United States*, 161 F. 2d 897	10
United States v. *Goldberg*, 206 F. Supp. 394	12
United States v. *Lepowitch*, 318 U.S. 702	10
United States v. *Rosenblum*, 176 F. 2d 321, certiorari denied, 338 U.S. 893	10

Cases—Continued Page
Williams v. *New York*, 337 U.S. 241 13
Williamson v. *United States*, 207 U.S. 425 12
Wong Tai v. *United States*, 273 U.S. 77 12
Statutes:
Internal Revenue Code of 1939:
Sec. 145(a) (26 U.S.C. (1952 ed.) 145(a)) 14, 17
Sec. 145(b) (26 U.S.C. (1952 ed.) 145(b)) 2, 3, 10, 11, 17
Internal Revenue Code of 1954:
Sec. 7201 (26 U.S.C. 7201) 2, 3, 7, 10, 11, 18
Sec. 7203 (26 U.S.C. 7203) 14, 18
Sec. 7207 (26 U.S.C. 7207) 14
18 U.S.C. 2 11
18 U.S.C. 371 ..... 2, 7, 18
Miscellaneous:
Federal Rules of Criminal Procedure:
Rule 7(c) 11
Rule 12(b) 9
Rule 36 ..... 15, 19

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 551

H. A. LOTT, LEE BLOCKER AND LORN D. FRAZIER,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 7a–28a) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on September 25, 1962 (Pet. 29a). The petition for a writ of certiorari was filed on October 23, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the indictment charges petitioners with the offense of having wilfully attempted to evade the

corporate tax and with conspiracy to commit the substantive offense.

2. Whether the three-month delay in sentencing petitioners, during which time the sentencing judge presided at the trial of others charged in the indictment, was unreasonable and denied petitioners due process of law.

3. Whether, in convicting and sentencing defendants on pleas of *nolo contendere*, the trial judge wrongfully considered evidence introduced in the trial of petitioners' co-defendants.

4. Whether a formal judgment clearly stating the statute violated and the sentence imposed is rendered null and void because of allegedly inaccurate recitals as to the manner of violating the statute.

STATUTES AND RULES INVOLVED

The relevant provisions of the Internal Revenue Codes of 1939 and 1954, 18 U.S.C. 371, and Rule 36 of the Federal Rules of Criminal Procedure are set forth in the Appendix, *infra*, pp. 17–19.

STATEMENT

On April 14, 1958, the three petitioners, plus Richard and Allan Farnsworth, were indicted (1) for having wilfully attempted to evade the taxes of the Farnsworth and Chambers Company, Inc., for the years 1951 through 1954 in violation of Section 145(b) and 7201 of the Internal Revenue Codes of 1939 and 1954 (counts 1–4); and (2) for conspiracy to commit these substantive offenses in violation of 18 U.S.C. 371 (count 5) (R. 11–23). The defendants were identified as various officers and employees of

the corporation. The evasion counts stated that the defendants had falsified records, approved false invoices, concealed corporate assets and income, diverted corporate income and caused the preparation and mailing of returns which, as the defendants "then and there well knew," were false and fraudulent in that they stated a certain net income and tax whereas the corporation owed a larger tax on a larger net income. The substantive counts alleged the following amounts of reported and corrected net income and tax liability:

NET INCOME

Year	Reported	Corrected	Additional
1951	$399,135.98	$763,599.62	$364,463.64
1952	410,937.87	495,528.77	84,590.90
1953	179,628.93	362,929.90	183,300.97
1954	282,441.03	406,898.80	124,457.77
Total	1,272,143.81	2,028,957.09	756,813.28

TAX LIABILITY

Year	Reported	Corrected	Additional
1951	$194,482.66	$482,278.96	$287,796.30
1952	207,135.40	251,122.66	43,987.26
1953	87,907.04	183,223.55	95,316.51
1954	135,797.53	200,515.57	64,718.04
Total	625,322.63	1,117,140.74	491,818.11

Count 5 charged that the defendants conspired to violate Sections 145(b) and 7201 and alleged 26 overt acts, including, as to each defendant, the making and approving of false records, or the filing or signing of the false returns identified in the substantive counts.

A motion to dismiss was filed by petitioners Frazier and Blocker claiming that the acts attributable to the various individuals were not specified in the in-

dictment; the substantive counts were multifarious; the conspiracy count did not allege the conspiracy agreement; and the indictment failed to state an offense (R. 62–65). The motion was overruled (R. 346). Petitioners filed motions and briefs requesting a bill of particulars (R. 24–47, 80–123). The motions asked for the details of the acts alleged in the indictment. While this motion was denied (R. 346), the government voluntarily filed a bill of particulars (R. 219). A motion for additional particulars (R. 223) was denied (R. 347).

All five defendants entered pleas of not guilty on April 24, 1958 (R. 24). On March 17 and 20, 1959, the three petitioners withdrew their pleas and entered pleas of *nolo contendere,* which were accepted by the court over the opposition of the United States Attorney (R. 444, 466). Each petitioner pleaded *nolo contendere,* count by count, as the indictment was read to him verbatim, including the citation of the statutes violated. The court thoroughly interrogated each petitioner and warned him as to the seriousness of the charges and the possible sentence. Each petitioner admitted, *inter alia,* having received a copy of the indictment, that he had reviewed the indictment with counsel, that he understood it, that he knew the offenses charged were serious, and that the plea was entered on his own responsibility and not that of his attorney (R. 459, 479). The pleas were then received, and no attempt to withdraw these pleas was made until after prison terms had been imposed.

Upon entry of the pleas of *nolo contendere,* the cases were continued for pre-sentence investigation.

Sentencing was deferred until the conclusion of the entire case (R. 462, 464, 482, 483). Petitioners neither objected to postponement of sentence nor requested sentence. Trial of the other two defendants commenced on April 6, 1959, and ended on June 10, 1959, with a verdict acquitting Allan Farnsworth and disagreement as to Richard Farnsworth. Counsel for defendants Blocker and Frazier had an observer at the trial and had the benefit of all the testimony adduced, either verbatim or in substance (R. 525).

During the sentencing hearing, government counsel mentioned that the trial judge had "heard the facts tried" which were involved in the case (R. 488). No objection was made to this statement. The court then called on the three petitioners, their friends, and lawyers to make statements on behalf of petitioners (R. 488). Attorneys for all the petitioners cited testimony introduced during the long trial of the other defendants in their plea for leniency (R. 506, 526–528, 533–534, 537, 540). The trial court alluded to the testimony in the trial, generally in response to remarks of petitioners' counsel (R. 526, 527, 532, 537, 541, 550). All three petitioners, either personally or through counsel, admitted that they had been guilty of improprieties, and expressed regret and shame (R. 521–522, 531–532, 539, 541–542).

Prior to imposing sentence the Court stated (R. 551):

> I have found each guilty of the felonies as contained in the Grand Jury indictment.

Petitioners Frazier and Lott were sentenced to imprisonment for two years on each count, the sentences

to run concurrently, and fined a total of $20,000. Petitioner Blocker was sentenced to imprisonment for three years on each count, the sentence to run concurrently, and also fined a total of $20,000 (R. 553–559). The formal judgments filed on June 22, 1959 (R. 553–559) contained the following recital:

> It Is Adjudged that the defendant has been convicted upon his plea of nolo contendere of the offense of filing false and fraudulent corporate income tax returns, in violation of Title 26, U.S. Code, Section 145(b), as charged in Counts 1, 2, and 3, and in violation of Title 26, U.S. Code, Section 7201, as charged in Count 4; and the offense of conspiring to file false and fraudulent corporate income tax returns, in violation of Title 18 U.S. Code, Section 371, as charged in Count 5; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,
>
> It Is Adjudged that the defendant is guilty as charged and convicted.

Petitioners filed motions in arrest of judgment. The motion for petitioner Lott claimed that the indictments failed to state an offense with the necessary certainty and that the conspiracy count did not allege a conspiracy agreement (R. 559–561). The motion for petitioners Blocker and Frazier, in addition to these contentions, also argued that the indictment did not apprise petitioners of the charges against them personally and that the substantive counts were multifarious (R. 563–566). Both these motions were denied (R. 568–569). Petitioners then filed motions arguing that the trial court should exercise its dis-

cretion to reduce or suspend sentence (R. 569–571, 616–620), which were likewise denied (R. 575–576). Petitioners Blocker and Frazier moved the trial court for a rehearing on the motion to arrest judgment, which raised no issues in addition to the original motion (R. 578–581, 622–642). The trial court denied the motion (R. 576).

The notice of appeal filed by petitioners specified that they had been convicted of attempted tax evasion in violation of Sections 145 and 7201 of the Internal Revenue Codes of 1939 and 1954, as well as of conspiracy in violation of 18 U.S.C. 371 (R. 572, 613). The statement of points on appeal of petitioners Blocker and Frazier stated that the indictments were defective because they failed to charge in sufficient detail the elements of the offense, all the counts were duplicitous, and the various counts failed to allege how the acts of petitioners could have caused a tax deficiency or how such deficiency did or would result (R. 643–645). Petitioner Lott's statement claimed, in addition, that the conspiracy count did not allege a conspiracy agreement, and the sentence was excessive (R. 646–649). The court of appeals dismissed petitioners' appeal on the ground that it was untimely. 280 F. 2d 24. This Court, however, reversed and remanded the case to the court of appeals for consideration on the merits. 367 U.S. 421. On remand, the court of appeals affirmed petitioners' convictions and sentences (Pet. 7a–28a).

ARGUMENT

Petitioners make four contentions: (1) the indictment was invalid because (a) it did not adequately

charge what part each petitioner had in the attempt to evade; (b) it did not charge any deficiency in the corporation's *payment* of taxes or that petitioners had knowledge of any such deficiency; (c) a conspiracy count cannot allege a single conspiracy to evade taxes for four separate years; and (d) the conspiracy count did not charge all the elements of the substantive offense; (2) the three-month delay between acceptance of their pleas of *nolo contendere* and sentence violated due process; (3) the trial judge, in convicting and sentencing petitioners, considered evidence adduced at the trial of their co-defendants; and (4) the formal judgment was null and void because it erred in describing the offenses. None of these issues, however, is properly before the Court.

First, petitioners failed even to mention in the trial court any of these issues they now raise, other than those related to the indictment in their motions to dismiss, motions in arrest of judgment, or in any other manner. While those motions did attack the indictment generally, this was not sufficient to bring the claims petitioners now make to the attention of the trial court. The only issue now argued by petitioners which was properly raised in the trial court was that the indictment should have alleged the acts of each individual petitioner.[1]

Second, petitioners in their notices of appeal again mentioned none of the issues they now raise except for their attack on the indictment. And even as to

[1] The court of appeals opinion (Pet. App. 20a) states that petitioners argued in that court that petitioner Lott asked to be sentenced prior to the trial of the co-defendants. The record shows no such request and we know of none.

the indictment, they did not argue that it was invalid because the conspiracy count failed to allege the elements of the substantive offense or that the indictment did not charge what petitioners did individually. Thus, petitioners abandoned the only issue which they raised in the district court on which they are relying before this Court.[2]

In short, none of the issues relied on by petitioners was properly raised and preserved. Moreover, those issues do not involve the jurisdiction of the trial court or the failure of the indictment to charge an offense—issues which, under Rule 12(b) of the Federal Rules of Criminal Procedure, may be raised at any time. While some of petitioners' arguments are phrased in jurisdictional terms, even if they were correct they would show no more than that the trial court erred. Similarly, it is clear that the indictment charged federal offenses; petitioners' contentions merely amount to the argument that the indictment should have been more specific in order to apprise them of the precise offenses charged.

In any event, assuming *arguendo*, that some or all of the issues petitioners argue are before the Court, we shall now show that they are without merit.

1. The indictment charged the substantive and conspiracy offenses in the language of the tax-evasion

---

[2] Of the issues now raised by petitioners, two—the claims that the delay in sentencing was unconstitutional and that the conspiracy count was multifarious—were not raised when the case was first before this Court. Consequently, this is an independent reason why these issues cannot now be raised. *Christoffel* v. *United States*, 214 F. 2d 265 (C.A. D.C.), certiorari denied, 348 U.S. 850; see *Ballard* v. *United States*, 329 U.S. 187, 190.

statutes (Section 145(b) of the 1939 Code and Section 7201 of the 1954 Code) and of the conspiracy statute (18 U.S.C. 371). Accordingly, on its face it sufficiently charged the offenses to which petitioners pleaded (*United States* v. *Lepowitch*, 318 U.S. 702, 704; *Ekberg* v. *United States*, 167 F. 2d 380, 387 (C.A. 1)); further details were provided in the court's discretion, through a bill of particulars.

The indictment not only charged all of the essential elements of the offenses but did so in detail exceeding that of indictments approved repeatedly, over a long period of time, by numerous lower federal courts.[3] Although the indictment need not allege the manner of attempted evasion (*Reynolds* v. *United States*, 225 F. 2d 123, 126 (C.A. 5), certiorari denied, 350 U.S. 914; *United States* v. *Rosenblum*, 176 F. 2d 321, 324 (C.A. 7), certiorari denied, 338 U.S. 893), the indictment here set forth, specifically, many of the means used by petitioners. There is no basis in the statutes, in decisional law, or in reason, for petitioners' assertion (Pet. 14) that an indictment charging the attempted evasion of corporate taxes requires greater specificity than one charging the attempted evasion of individual income taxes. In short, the detailed allegations in the first four substantive counts of the indictment—as did the equally detailed allegations in the fifth count of the steps taken to consummate the conspiracy—constituted "plain, concise

[3] *E.g.*, *Rick* v. *United States*, 161 F. 2d 897, 898-899 (C.A. D.C.); *Gaunt* v. *United States*, 184 F. 2d 284, 288 (C.A. 1), certiorari denied, 340 U.S. 917; *Guzik* v. *United States*, 54 F. 2d 618, 619 (C.A. 7), certiorari denied, 285 U.S. 545.

and definite" statements of the respective offenses (Rule 7(c)) which, together with the bill of particulars, fully apprised petitioners of the nature of the charges to which they were called upon to respond.

There was no need for the indictment to allege the particular actions of each petitioner since, under 18 U.S.C. 2, a person can be guilty as an aider and abettor even if he himself did not commit the alleged acts. Consequently, an indictment need not specify whether a particular defendant is a principal or an accessory. *E.g., Jin Fuey Moy* v. *United States*, 254 U.S. 189. In any event, since it was not necessary that the indictment allege the means used by petitioners to commit the attempted evasion, it was *a fortiori* not necessary to allege which defendants engaged in the acts alleged.

There was also no need for the indictment to allege that the taxes actually paid by the corporation were deficient, since the gist of the offense defined by Sections 145(b) and 7201 is the wilful *attempt* to evade and defeat the tax. The offense is complete when a fraudulent return has been filed. Similarly, the indictment was not required to allege that petitioners had knowledge of any tax deficiency. It was enough that the indictment state, in the words of the statutes, that petitioners "did wilfully and knowingly attempt to evade and defeat" the tax, by filing a fraudulent return.

Concerning the conspiracy count, it was entirely proper to charge a conspiracy to evade taxes over four years. We can see no reason why a conspiracy to evade taxes, like any other conspiracy, cannot exist

over a period of years and have the purpose of committing several substantive offenses. This Court has held that an indictment charging such multiple objects is entirely proper.[4] *Braverman* v. *United States*, 317 U.S. 49. It is also well established that a conspiracy count need only charge the substantive offense which the defendants desired to commit, not all the elements of that offense. *Williamson* v. *United States*, 207 U.S. 425, 447; *Wong Tai* v. *United States*, 273 U.S. 77, 81. Moreover, here this conspiracy count, like the substantive counts, went further and specified various means used to effectuate the conspiracy such as the falsification of books and records, etc.[5]

2. Petitioners contend (Pet. 11–13) that the three-month delay in sentencing from the time their pleas of *nolo contendere* were accepted on March 17 and 20, 1959, until June 19, 1962, was unreasonable and denied them due process. The reason for the delay, however, was that the trial judge wished to await the trial of petitioners' co-defendants. Since it is fundamental that a court should not sentence a defendant without inquiry into the facts and circumstances (see *Peters* v. *United States*, 307 F. 2d 193 (C.A. D.C.)), it was entirely proper for the trial

---

[4] While *United States* v. *Goldberg*, 206 F. Supp. 394, 397 (E.D. Pa.), holds to the contrary, a conflict between a district court and a court of appeals of course does not justify the granting of certiorari by this Court.

[5] Petitioners' contentions with regard to the indictment are answered in greater detail in the government's brief when this case was first before this Court. See our brief in No. 238, Oct. Term, 1960, pp. 25–34.

court to delay sentence. Moreover, petitioners at no time protested the delay or demanded an earlier sentence (R. 462, 464, 482, 483). The failure to demand earlier sentence shows that petitioners were not seriously prejudiced by delay and precludes petitioners from a retroactive assault on the sentence. See *Pollard* v. *United States*, 352 U.S. 354, 362, note 8.

3. Petitioners allege (Pet. 7–10) the trial judge improperly considered evidence presented in the trial of the other two defendants in convicting and sentencing them pursuant to their pleas of *nolo contendere*. This question was not only never presented to the trial court, but petitioners' counsel themselves freely adverted to the trial in their pleas for leniency. The remarks of the district judge, referring to the trial testimony, were generally in response to counsel's statements. There is nothing in the record even suggesting that the trial court convicted petitioners on anything other than their pleas of *nolo contendere*. On the contrary, the written judgments explicitly state that "[i]t Is Adjudged that the defendant has been convicted upon his plea of *nolo contendere*" (R. 553, 555, 558). See also the government's brief when this case was previously before the Court, No. 238, Oct. Term, 1960, pp. 34–37.

As to the use of the evidence for purposes of sentencing, we submit that the trial court has the freedom and discretion to inform itself by considering any reliable information in order to impose a proper sentence. In *Williams* v. *New York*, 337 U.S. 241, this Court upheld a death sentence although the trial

court was influenced to ignore the jury's recommendation of life imprisonment by undisclosed hearsay information in a pre-sentence report of the probation office. Similarly, the Probation Officer's Manual issued by the Administrative Office of the United States Courts recommends that the files of the United States Attorney and other law enforcement agencies be used for pre-sentence investigation. Sworn testimony and documentary evidence available to all the defendants and scrutinized in the course of a trial is far more reliable as a basis for sentence."

4. Petitioners' final argument (Pet. 16–17) is that, since the written judgments stated that they were guilty of offenses which are misdemeanors, imposition of the sentences for felonies was beyond the jurisdiction of the district court. More specifically, they rely on the language of the written judgments describing the offenses as "the offense of filing false and fraudulent corporate income tax returns" and "conspiring to file false and fraudulent corporate income tax returns" (R. 553, 555, 556, 558). They claim that this language describes offenses under Section 145(a) of

---

[n] Petitioners, quoting a phrase from the government's brief when this case was first before the court, state that "the Solicitor General admitted that 'If they [Petitioners] were sentenced on evidence adduced at the trial of their co-defendants, they may have been deprived of their rights under the Sixth Amendment * * *'" (Pet. 7). The rest of this sentence and its context, however, show that the government was assuming, *arguendo*, that petitioners' contention was correct on the merits. We were contending that even so, the issue did not involve the jurisdiction of the district court and therefore was not properly before this Court. See our brief in No. 238, Oct. Term, 1960, pp. 34–35.

the 1939 Code and Sections 7203 and 7207 of the 1954 Code, which are misdemeanors.

Ambiguities in a judgment are to be resolved in the light of the entire record. *Moore* v. *Harjo*, 144 F. 2d 318 (C.A. 10). The record here shows that the indictment charged the offense in the language of the felony statutes, Sections 145(b) and 7201 of the Internal Revenue Codes of 1939 and 1954, which were cited by title and section. Petitioners pleaded count by count to that indictment as it was read to them. The court orally announced that it found petitioners "guilty of the felonies as contained in the Grand Jury indictment" (R. 551–553). The sentences were appropriate only to felony convictions and the written judgments cited the felony statutes in describing the offenses. Petitioners' notices of appeal cited the same felony statutes as the basis of their conviction. Thus, it is obvious that the general descriptions of the offenses in the written judgments, if they do describe misdemeanors and not felonies, constituted merely a clerical error. If petitioners want the written judgments corrected, they can file in the trial court a motion under Rule 36 of the Federal Rules of Criminal Procedure, which allows clerical errors in judgments to be corrected by the sentencing court at any time. See also the government's brief when this case was previously before the Court, No. 238, Oct. Term, 1960, pp. 37–41.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

JOSEPH M. HOWARD,
JOHN P. BURKE,
Attorneys.

NOVEMBER 1962.

APPENDIX

Internal Revenue Code of 1939:

SEC. 145. PENALTIES.

(a) Failure to file returns, submit information, or pay tax.—Any person required under this chapter to pay any estimated tax or tax, or required by law or regulations made under authority thereof to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who willfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Failure to collect and pay over tax, or attempt to defeat or evade tax.—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * * *

(26 U.S.C. (1952 ed.) 145).

Internal Revenue Code of 1954:

SEC. 7201. ATTEMPT TO EVADE OR DEFEAT TAX.

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

* * * * *

SEC. 7203. WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(26 U.S.C. 7201, 7203)

18 U.S.C.:

SEC. 371. *Conspiracy to commit offense or to defraud United States.*—If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more

than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Federal Rules of Criminal Procedure:

RULE 36. *Clerical Mistakes.*—Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

U. S. GOVERNMENT PRINTING OFFICE: 1962